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1	BEFORE THE FEDERAL ELECTION COMMISSION			
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3	In the Matter of)		
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5	MUR 7245)	DISMISSAL AND	
6	Shiva Ayyadurai)	CASE CLOSURE UNDER THE	
7	Shiva 4 Senate and	,)	ENFORCEMENT PRIORITY	
8	Kate Lind as treasurer	,)	SYSTEM	
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10	GENERAL COUNSEL'S REPORT			

GENERAL COUNSEL'S REPORT

Under the Enforcement Priority System, the Commission uses formal scoring criteria as a basis to allocate its resources and decide which matters to pursue. These criteria include, without limitation, an assessment of the following factors: (1) the gravity of the alleged violation, taking into account both the type of activity and the amount in violation; (2) the apparent impact the alleged violation may have had on the electoral process; (3) the complexity of the legal issues raised in the matter; and (4) recent trends in potential violations of the Federal Election Campaign Act of 1971, as amended (the "Act"), and developments of the law. It is the Commission's policy that pursuing relatively low-rated matters on the Enforcement docket warrants the exercise of its prosecutorial discretion to dismiss cases under certain circumstances, or to find no reason to believe that the Act was violated. The Office of General Counsel has scored MUR 7245 as a low-rated matter and has determined that it should not be referred to the Alternative Dispute Resolution Office.¹

The Complaint alleges that Shiva Ayyadurai, candidate for U.S. Senate from Massachusetts, and Shiva 4 Senate and Kate Lind in her official capacity as treasurer (the "Committee") violated the Act and Commission regulations by failing to file a 2017 April Quarterly disclosure report.² The Complaint contends that Ayyadurai registered as a candidate on or about March 22, 2017, but did not file a 2017 April Quarterly report, even though the Committee had a website, collected contributions,

The EPS rating information is as follows: Complaint filed: May 5, 2017; Supplements filed: June 19, 2017, June 23, 2017, and July 10, 2017. Response filed: July 28, 2017.

Compl. at 1 (May 5, 2017).

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- and distributed a mailer at issue in this matter.³ Further, the Complaint alleges that the Committee
- 2 failed to include a printed box around a disclaimer on a campaign flyer.⁴ The Complainant also filed
- 3 three supplements to the complaint raising various disclaimer allegations: Committee emails did not
- 4 contain a printed box around disclaimers, the candidate's website disclaimer was not inside a printed
- 5 box, and disclaimers on other Committee materials were insufficient or difficult to read.⁵

The Committee contends that it did not have to file a 2017 April Quarterly report because it did not raise or spend over \$5,000 by the end of the reporting period.⁶ The Committee explains that it was being "overcautious" by filing its statement of organization before it exceeded the monetary thresholds.⁷ Further, the Committee states that the website at issue is actually a blog the candidate maintained before becoming a candidate, and he used the blog to share notices of public events related to health, medicine, technology, and innovation.⁸ The Committee admits that Ayyadurai posted campaign information on the blog, but states that it will ensure that future campaign emails and flyers contain compliant disclaimers.⁹

An individual becomes a "candidate" when he or she receives in excess of \$5,000 in contributions or makes expenditures in excess of \$5,000.¹⁰ When an individual becomes a "candidate," the Act requires the candidate to file a Statement of Candidacy designating a candidate's

³ Comp. at 1; see also Compl. Attach. 1.

Compl. at 1; see also Compl. Attach. 2. The Complaint also alleges that the Committee should include the last name of the candidate in its own name. The Act makes no such requirement, so we make no recommendations as to this allegation.

⁵ Supp. Compl. 1 (June 19, 2017); Supp. Compl. 2 (June 23, 2017); and Supp. Compl. 3 (July 10, 2017).

⁶ Resp. at 1-2 (July 28, 2017).

⁷ *Id.* at 2.

⁸ *Id.* at 1.

⁹ *Id.* at 1.

⁵² U.S.C. § 30101(2). A candidate's principal campaign committee becomes a "political committee" when the individual becomes a candidate. 11 C.F.R. § 100.5(d).

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1 principal campaign committee within fifteen days, and requires the principal campaign committee to

2 file a Statement of Organization no later than ten days after the candidate's designation. 11 The Act

3 and the Commission's regulations require each treasurer of an authorized political committee to file

quarterly reports of receipts and disbursements. 12 A candidate and committee may voluntarily

register and report before the candidate and the committee pass the relevant thresholds in the Act, but

such filings are not required. 13

A "public communication" is defined as a "communication by means of any broadcast, cable or satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing, or telephone bank to the general public, or any other form of general public advertising." ¹⁴ The regulations further require that disclaimers for printed communications must be conspicuous and clearly state that they are paid for or authorized by a candidate or candidate's committee, state the committee's street address, telephone number, or web address, be of sufficient type size to be readable, and be in a printed box set apart from the rest of the communication. ¹⁵

A review of the Committee's disclosure reports indicates that the Committee had not met the reporting threshold by March 31, 2017. Since there is no information suggesting that the Committee was required to file a 2017 April Quarterly report, we recommend that the Commission find no reason to believe that the Committee violated 52 U.S.C. § 30104(a) and (b). Further, although the Committee's communications did not contain wholly compliant disclaimers, the

⁵² U.S.C. §§ 30102(e)(1) and 30103(a).

¹² 52 U.S.C. § 30104(a), (b); 11 C.F.R. §§ 104.1, 104.3(a), (b), 104.5(a).

¹¹ C.F.R. § 104.1(b).

^{14 11} C.F.R. § 100.26.

¹⁵ 52 U.S.C. § 30120(a), (c); 11 C.F.R. § 110.11(a)-(c).

The Committee timely filed its 2017 July Quarterly report, which disclosed receipts and disbursements beginning from the time the Candidate filed with the Commission in March 2017.

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- 1 violations are technical in nature, and the Committee contends it has corrected the disclaimer in its
- 2 Committee emails and has added disclaimers to the Candidate's personal blog. ¹⁷ Therefore, given
- 3 the corrective action of the Committee, as well as the de minimis nature of the disclaimer violations,
- 4 and in furtherance of the Commission's priorities, relative to other matters pending on the
- 5 Enforcement docket, we recommend that the Commission exercise its prosecutorial discretion to
- 6 dismiss the allegation that Shiva 4 Senate and Kate Lind in her official capacity as treasurer violated
- 7 52 U.S.C. § 30120(a) and (c). 18

RECOMMENDATIONS

- 1. Find no reason to believe that Shiva 4 Senate and Kate Lind in her official capacity as treasurer violated 52 U.S.C. § 30104(a) and (b);
- 2. Dismiss the allegation that Shiva 4 Senate and Kate Lind in her official capacity as treasurer violated 52 U.S.C. § 30120(a) and (c) pursuant to the Commission's prosecutorial discretion under *Heckler v. Chaney*, 470 U.S. 821 (1985);
- 3. Approve the Factual and Legal Analysis;
- 4. Approve the appropriate letters; and

The Complaint's allegation that disclaimers on websites and emails need to be inside a printed box is unfounded because such materials are not considered to be "printed." See 52 U.S.C. § 30120; 11 C.F.R. § 110.11(b) and (c)(2). See also Statement of Reasons, Comm'rs. Weintraub, Walther, Lenhard, Mason, Toner & von Spakovsky at 4, MUR 5526 (Graf for Congress, et al.) ("print" does not include communication on Internet pages and "neither the printing nor the existence of a printout transforms the Internet page itself into a printed communication" and "when FECA uses the words "Internet," "web," "website," or "electronic," or forms of these words, it does not mean something ordinarily understood as being in print or in printed form"); see also MUR 6662 (Heidi for Texas Campaign, Inc.) (emails do not fall under the definition of "public communications," and thus were not required to include disclaimer); MUR 6591 (Tom Stilson) (the Commission found no reason to believe that the committee's website needed to meet the "printed materials" requirements for its disclaimer); and MUR 6406 (Lee Terry for Congress, et al.) (the Commission found no reason to believe that a printed box was required around a disclaimer on an Internet campaign advertisement).

¹⁸ Heckler v. Chaney, 470 U.S. 821 (1985).

1	5.	Close the file as to all Respondents.	
2			T . T . C.
3	•		Lisa J. Stevenson
4			Acting General Counsel
5		•	•
6		: ·	Kathleen M. Guith
7			Associate General Counsel
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9			
10	9.18.17	,	1 - 0
11	9.10.17	BY:	Stephen Jua
12	Date		Stephen Gura
13	24.0		Deputy Associate General Counsel
14			Deputy Historiate Contra Counsel
15			
16		•	$()$ \downarrow $()$ \downarrow
17			John Man
		·	Jeff C. Jardan
18			Jeff S. Jordan
19	•		Assistant General Counsel
20			•
21		·	
22			11 Jan da Pransas
23		•	Warda Brown
24			Wanda D. Brown
25			Attorney